DISTRIBUTED
NOV 2 - ...

Supreme Court, U. S.
FILED
NOV 23 1973
MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1973

No. 73-564

HERMAN I. SHALLER,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

REPLY TO MEMORANDUM FOR THE UNITED STATES IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

The Government's contention that petitioner's system "was not feasible" is contrary to well known laws of classical (Newtonian) mechanics and sound engineering principles. Petitioner was granted United States Letters Patent 3,081,626 for his test missile recovery system. Patents are issued by the U.S. Patent Office only when a device or system convincingly demonstrates the combination of attributes of novelty, utility, and unobviousness. The Government's contention in this instance is

therefore in direct conflict with and contrary to a determination by the U.S. Patent Office.

The Government's contention that petitioner's system was never used is a factual misrepresentation. An award for 300 dollars for "intangible" benefits was tendered to petitioner in view of that use. This controversy arose because of the Government's refusal to tender a proper award for admitted "tangible" benefits, as required under the law.

The Government's contention that the granting of an award and determination of the proper amount of an award was intended to be left to the "complete discretion of the agency head" is in conflict with the specification of proper amounts of dollars to be awarded for specified dollar savings issued by the U.S. Civil Service Commission under the incentive awards law. That table of specified awards and savings is an integral part of the Navy's Civilian Personnel Instructions. The issue is whether the head of an agency is required to comply with the law and his own agency's regulations, or whether he is above the law in this connection.

THOMAS J. GREER, JR.
666 Eleventh Street, N.W.
Washington, D.C. 20001
Attorney for Petitioner